



FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 18-349; DA 21-657; FR ID 33524]

Media Bureau Seeks to Update the Record in the 2018 Quadrennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Media Bureau of the Federal Communications Commission seeks to update the record in the 2018 Quadrennial Review proceeding, in which the Commission has sought comment, pursuant to its obligation under of the Telecommunications Act of 1996, on whether its media ownership rules remain “necessary in the public interest as the result of competition.”

DATES: Comment Date: [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Reply Comment Date: [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ty Bream, Industry Analysis Division, Media Bureau, Ty.Bream@fcc.gov, (202) 418-0644.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau’s Public Notice in MB Docket No. 18-349, DA 21-657, that was released June 4, 2021. The full text of this document is available for public inspection online at <https://docs.fcc.gov/public/attachments/DA-21-656A1.pdf>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format, etc.) and reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) may be requested by sending an email to fcc504@fcc.gov or calling the FCC’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. *Introduction.* With this Public Notice, the Media Bureau seeks to update the record in the 2018 Quadrennial Review proceeding, in which the Commission has sought comment, pursuant to its obligation under Section 202(h) of the Telecommunications Act of 1996, on whether its media ownership rules remain “necessary in the public interest as the result of competition.” The prior comment and reply comment period in this proceeding closed two years ago. On April 1, 2021, the U.S. Supreme Court issued an opinion in *FCC v. Prometheus Radio Project*, 141 S.Ct. 1150 (2021), reversing a decision of the U.S. Court of Appeals for the Third Circuit, *Prometheus Radio Project v. FCC*, 939 F.3d 567 (3d Cir. 2019), and restoring the Commission’s media ownership rules as adopted in the combined 2010/2014 Quadrennial Review proceeding. Consistent with the Supreme Court’s decision, in a separate order, the Media Bureau is reinstating the changes adopted in three orders that were part of, or related to, the 2010/2014 proceeding—the 2018 *Incubator Order* (83 FR 43773, Aug. 28, 2018); the 2017 *Order on Reconsideration* (83 FR 755, Jan. 8, 2018); and the eligible entity definition from the 2016 *Second Report and Order* (81 FR 76262, Nov. 1, 2016). Given the passage of time since the prior comment period ended, as well as the subsequent litigation culminating with the Supreme Court’s recent decision, we now seek further comment to update the record in the 2018 Quadrennial Review proceeding.

2. *Background.* Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its media ownership rules every four years to determine whether they remain “necessary in the public interest as the result of competition.” The Commission reviews these rules to ensure that they continue to serve the core policy goals of competition, localism, and diversity as intended. On December 12, 2018, the Commission adopted a Notice of Proposed Rulemaking (NPRM) to initiate the 2018 Quadrennial Review proceeding and to seek comment on whether to retain, modify, or eliminate any of its structural media ownership rules. *See 2018 Quadrennial Review NPRM*, 84 FR 6741 (Feb. 28, 2019). The NPRM also sought comment on several diversity-related proposals offered in the record of the 2010/2014

Quadrennial Review proceeding. As a result of the Supreme Court's decision to restore the changes made in the *Order on Reconsideration*, including the elimination of several rules, three structural ownership rules remain that are subject to the Commission's quadrennial review process. They are the Local Radio Ownership Rule (47 CFR 73.3555(a)), the Local Television Ownership Rule (47 CFR 73.3555(b)), and the Dual Network Rule (47 CFR 73.658(g)). These are the same three structural rules on which the Commission sought comment in the 2018 *Quadrennial Review NPRM*.

3. As noted above, the decision of the Supreme Court reversed a prior decision by the Third Circuit, which had vacated and remanded the *Order on Reconsideration* and the *Incubator Order* in their entirety, as well as the eligible entity definition from *Second Report and Order*. In its decision, the Third Circuit found that the Commission failed to consider adequately the effect of its rule changes on ownership by women and minorities. The Commission sought review of that decision by the Third Circuit *en banc*, which was denied on November 20, 2019. The court's mandate issued on November 29, 2019, reinstating the media ownership rules adopted in the *Second Report and Order*. The Media Bureau issued an Order on December 20, 2019 to restore those rules to the Code of Federal Regulations. *See* 85 FR 5163 (Jan. 29, 2020).

4. The Commission, as well the National Association of Broadcasters, each filed a petition for a writ of certiorari seeking review of the Third Circuit's decision by the Supreme Court. The Court granted the petitions, and on April 1, 2021, the Supreme Court issued an opinion reversing the Third Circuit's decision and restoring the *Order on Reconsideration*, the *Incubator Order*, and the revenue-based eligible entity definition from the *Second Report and Order*. In doing so, the Court found that the Commission's decision in the 2017 *Order on Reconsideration* to repeal or modify several of its rules was not arbitrary and capricious under the Administrative Procedure Act and that the Commission had reasonably considered the available evidence in concluding that such changes were not likely to harm minority and female ownership. In addition, because the Court reached its decision based on other grounds, the Court

did not reach arguments from industry petitioners that Section 202(h) bars the Commission from considering minority and female ownership as part of its quadrennial review.

5. Contemporaneously with this Public Notice and consistent with the Supreme Court's decision, the Media Bureau, in a separate order, is reinstating the changes adopted in the *Order on Reconsideration* and the *Incubator Order* as well as the eligible entity definition adopted in the *Second Report and Order*. As the order sets forth, the Newspaper/Broadcast Cross-Ownership Rule, the Radio/Television Cross-Ownership Rule, and the Television Joint Sales Agreement Attribution Rule are eliminated, and the Local Television Ownership Rule and Local Radio Ownership Rule are reinstated as adopted in the *Order on Reconsideration*. In addition, the eligible entity standard and its application to regulatory measures as set forth in the *Second Report and Order* are reinstated, as are the regulatory measures adopted in the *Incubator Order*.

6. *Discussion.* With this Public Notice, we open a new comment window, specifically to encourage the submission of new or additional information to update the record in the 2018 Quadrennial Review proceeding. As noted above, the formal comment and reply period in this proceeding closed two years ago. Nonetheless, as evident from the docket in this proceeding, the 2018 Quadrennial Review proceeding has generated, and continues to generate, significant interest, including through the submission of additional information even after the initial comment period has ended. Accordingly, we ask commenters to take this opportunity to update the record in the 2018 Quadrennial Review proceeding, including with regard to the diversity-related proposals cited therein. Specifically, the diversity-related proposals mentioned in the *2018 Quadrennial Review NPRM* include extending cable procurement requirements to broadcasters, adopting formulas aimed at creating media ownership limits that promote diversity, and developing a model for market-based, tradeable "diversity credits" to serve as an alternative method for setting ownership limits.

7. We seek comment, first, on materials that have been filed in the docket of this proceeding since the formal comment and reply period ended in May 2019. To the extent they have not already done so, commenters are invited to review these materials and the issues they raise and comment on them as they feel is appropriate. In particular, we seek comment on whether these materials, either individually or collectively, highlight any issues, including issues that may not have been fully explored by the *2018 Quadrennial Review NPRM*, that commenters believe now warrant further comment and consideration. Moreover, are there issues raised in the *2018 Quadrennial Review NPRM*, or in the record in response to that NPRM, for which new and relevant information has come to light? Commenters are strongly encouraged at this stage to provide detailed analysis, empirical evidence, and/or specific proposals that the Commission should consider in relation to such issues. In so doing, commenters should explain how such analysis, evidence, or proposals relate to the Commission's interest in ensuring that its rules continue to promote the goals of competition, localism, and diversity.

8. Beyond reviewing the existing record in light of the passage of time, we also seek submission of new or additional information regarding the media marketplace that commenters believe is relevant to this proceeding. Specifically, we seek information regarding the broadcast industry's evolution since early 2019 and its current trajectory, including the effects, if any, of technological change, new entry, consolidation, or changing market conditions. We seek comment in particular on the further development and impact of technological advances and industry practices. In the *2018 Quadrennial Review NPRM*, the Commission sought comment on whether and, if so how, it should account for multicast streams, satellite stations, or low power television stations for purposes of the Local Television Ownership Rule. How should the increased use of these platforms, and other innovations, such as the continued deployment and use of the ATSC 3.0 transmission standard by the broadcast television industry, inform our review? What implications, if any, do these or other developments have for the Commission's broadcast ownership rules or its core policy goals of competition, localism, and viewpoint

diversity, which support those rules? Have recent industry developments altered the incentives or behavior of any market participants in ways that are relevant to this proceeding?

9. Similarly, we seek comment on any other relevant trends that have been, or are being, observed within the broadcast industry or in related markets. Among other things, the *2018 Quadrennial Review NPRM* noted the growth of online audio and video sources, including as sources for news and information, as well as the continued strength and importance of broadcast radio and television stations in the local communities they serve. To what extent, if at all, have trends such as these (or others) continued, accelerated, flattened, or reversed in recent years, such that the Commission should take account of any new or continuing trendlines in the current proceeding? What do these trends indicate with respect to consumers' relative reliance on various sources for local news and information, and is there any difference in this respect between local and national news and information? Are there recent trends regarding broadcast industry ratings or revenues, including advertising, retransmission consent, and online revenues, that are relevant to this proceeding? In what ways will such trends impact the evolution and the viability of the broadcast industry? Are there other industry events or trends that have not previously been described or fully explored in this proceeding that may be relevant to the Commission? The *2018 Quadrennial Review NPRM*, for example, notes the importance of the Internet as a means to access audio and video content today. In this regard, commenters should distinguish between Internet sources (e.g., websites, mobile applications, social media accounts) that are independent of, as opposed to those that are affiliated with, broadcast stations (e.g., television station websites). How, if at all, should the Commission consider recent trends regarding access to, or usage of, broadband Internet service or other technologies in conjunction with the media ownership rules?

10. We note that the *2018 Quadrennial Review NPRM* sought comment on the impact, if any, of the 2017 completion of the Incentive Auction and the repack of the spectrum band on the Local Television Ownership Rule. Shortly after the release of the *2018 Quadrennial Review*

NPRM, the Commission reported that several dozen stations had discontinued operations while the vast majority of winning bidders chose instead to remain on the air through channel sharing arrangements. How, if at all, has the Incentive Auction and its aftermath affected the broadcast industry?

11. In considering market trends since the comment period ended in May 2019, we seek comment specifically on the impact of the COVID-19 pandemic on this proceeding. For example, the Commission's most recent Communications Marketplace Report (released on December 31, 2020) discusses some possible effects of the COVID-19 pandemic on the broadcast radio and television industries, most notably through decreased advertising revenue. The report, however, also notes that, despite MVPD subscriber declines, "retransmission consent revenue earned by major station groups increased in both the first and second quarters of 2020 by nearly 20% compared to the first and second quarters of 2019," suggesting that retransmission consent revenues for television stations "have not been meaningfully affected by the COVID-19 pandemic." To what extent, if at all, should the Commission consider, in this proceeding, changes to, or effects on, the broadcast radio and television industries as a result of the COVID-19 pandemic? What are those changes or effects? Which, if any, should be considered temporary in nature and which could be expected to have a lasting impact? What implications, if any, do they have for the Commission's broadcast ownership rules?

12. In addition to identifying and describing developments and trends, we also ask commenters to tell us whether there is any further empirical evidence the Commission should consider. For instance, are there any new or additional data that are now available, or studies that have been published or performed, that would inform the Commission's analysis? If so, we encourage commenters to submit copies of such data or studies in the docket of this proceeding (to the extent they have not already done so) and urge commenters to provide any interpretations, analyses, and conclusions based on such materials. In particular, we welcome any insights or analysis of research regarding how to further the Commission's policy goals and whether such

research suggests any specific rule changes. If so, in what ways do the data or other information support such changes? We encourage commenters to draw any such conclusions or connections between the data and potential policy or rule changes as tightly and as explicitly as possible. Where possible, we also encourage commenters to quantify and explain the benefits or costs associated with any policy or rule they discuss or, in the alternative, to explain the difficulties faced in trying to quantify benefits and costs in this context and how the Commission might nonetheless evaluate them in the absence of extensive or conclusive objective metrics. Moreover, in addition to identifying, analyzing, and submitting existing materials, we welcome commenters to take this opportunity to compile data or conduct further research that can be submitted to the Commission during the new comment window.

13. Finally, we seek comment on whether there are any other legal or economic factors, changes, or issues that the Commission should consider in the context of this quadrennial review and, if so, how the Commission should evaluate or address them.

14. *Initial Regulatory Flexibility Analysis.* The NPRM included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposals. We invite parties to file comments on the IRFA in light of this request to refresh the record.

15. *Ex Parte Rules – Permit But Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules (47 CFR 1.1200 et seq.). Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or

arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

16. *Filing Comments and Replies.* **All filings must be submitted in MB Docket No. 18-349.** Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020).
<https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>

17. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

18. *Additional Information.* For additional information on this proceeding, please contact Ty Bream of the Media Bureau, Industry Analysis Division, Ty.Bream@fcc.gov, (202) 418-0644.

Federal Communications Commission.

Thomas Horan,
Chief of Staff, Media Bureau.